



U.S. DEPARTMENT of STATE

Malaysia

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Malaysia is a federation of 13 states and 3 federal territories with a parliamentary system of government based on periodic multiparty elections. Opposition parties actively contest elections but face significant obstacles in competing with the ruling National Front coalition, which has held power for more than 45 years. March national elections were conducted in a generally transparent manner, but the opposition complained of the ruling coalition's exploitation of the powers of incumbency. Opposition parties won 10 percent of the seats in the Parliament, and an opposition party retained control of one state government. The Constitution provides for an independent judiciary; however, government action, constitutional amendments, legislation, and other factors undermined judicial independence and strengthened executive influence over the judiciary. The September decision by the country's highest court to overturn the 2000 sodomy conviction of former Deputy Prime Minister Anwar Ibrahim was widely regarded as an indication of judicial independence.

The Royal Malaysian Police have primary responsibility for internal security matters. The police report to and are under the control of the Ministry of Internal Security, which was created in April out of the Home Affairs Ministry. Members of the police committed occasional human rights abuses.

The country has a free market economy and a population of approximately 25.1 million. The economy grew at 5.2 percent in 2003 and was estimated to have grown by approximately 6.5 percent during the year. The Government continued expansionary fiscal and monetary policies and took an active role in managing the export-oriented economy. Services and manufacturing accounted for 57 percent and 30.4 percent, respectively, of the gross domestic product. The unemployment rate remained approximately 3.5 percent.

The Government generally respected the human rights of its citizens; however, there were problems in some areas. The Government acknowledged that it restricted certain political and civil rights to maintain social harmony and political stability. Police killed a number of persons in the course of apprehending them, and there were deaths in custody as well. Other problems included police abuse of detainees, use of the Internal Security Act (ISA) and other statutes to arrest and detain persons without charge or trial, persistent questions about the impartiality and independence of the judiciary, and restrictions on freedoms of press, association, and assembly. There continued to be some restrictions on religious freedom. Longstanding policies gave preferences to ethnic Malays in many areas. The country was a source and destination for trafficking in women and girls for the purposes of prostitution. Limitations on workers rights and instances of discrimination and exploitation of indigenous groups and migrant workers were problems.

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. Arbitrary and Unlawful Deprivation of Life

There were no politically motivated killings by the Government or its agents; however, security forces killed persons during the year. Local nongovernmental organizations (NGOs) reported that police killed 7 persons while apprehending them, down from 27 such killings in 2003. Local NGOs reported that 2 persons died in police custody during the year, down from 11 such deaths in 2003.

In 2003, the Human Rights Commission of Malaysia (Suhakam) stated that it was aware of "numerous" complaints of deaths in police custody, police brutality, and negligence. In July, Suhakam reported that in 2003, three police officers were arrested and charged in connection with deaths in custody. In October, the press reported that a police officer was convicted of culpable homicide and sentenced to 6 years in prison in connection with the 2003 killing by other inmates of a detainee in Batu Pahat jail. The Criminal Procedure Code empowers magistrates and public prosecutors to investigate such killings and charge those responsible under the Penal Code, and inquiries were begun in five cases dating from 2003 and 2004; however, no such prosecutions were brought forward during the year. In August, the Government agreed to compensate the family members of six men killed by police in 1998. In 2002, the High Court found the police officers guilty of murderous assault, but did not sentence

them to any punishment.

b. Disappearance

There were no reports of politically motivated disappearances.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

No constitutional provision or law specifically prohibits torture; however, laws that prohibit "committing grievous hurt" encompass torture. According to the Government, every report of abuse of prisoners is investigated; however, the Government routinely did not release information on the results of internal police investigations, and whether those responsible for abuses were punished was not always known. There were press reports of alleged torture or mistreatment by the police. Local NGOs stated that police sometimes subjected criminal suspects and illegal alien detainees to physical and psychological torture during interrogation and detention. In May, the international NGO Human Rights Watch (HRW) stated that some prisoners were subjected to sexually humiliating questioning and were made to stand semi-naked for long periods. The Government denied these allegations. In July, Suhakam representatives visited the prison where the prisoners were allegedly mistreated and told the press that they found no evidence of such treatment.

In February, a coalition of 44 NGOs and 6 political parties called on the Inspector General of Police (IGP) to address instances of abuse of police powers. In April, the Prime Minister launched a National Integrity Plan directed at reducing corruption, graft, and abuse of power. The Police Commission, which is chaired by Prime Minister Abdullah in his capacity as Internal Security Minister, reported that in 2003, disciplinary actions were initiated against 1,138 police personnel, compared with 1,012 in 2002. Offenses noted in the report included accepting bribes, theft, and rape; punishments included suspension, dismissal, and demotion. The report cited the strict monitoring effort aimed at improving the public image of the police force as the reason for the increase in the number of personnel sanctioned. In September, the press reported that during the year, plainclothes police regularly investigated police officers who appeared to be living beyond their means.

In 2003, the High Court reversed a Sessions Court's acquittal and convicted a police constable for the 2002 rape of two foreign women who were in custody at the time of the rape (see Section 5).

In February, police arrested 17 demonstrators and used water cannons forcibly to disperse dozens of others who were protesting alleged abuse of police powers (see Section 2.b.).

Unlike in previous years, there were no confirmed reports that the police aided logging companies' intimidation tactics in appropriating land from indigenous communities in Sarawak.

Criminal law prescribes caning as an additional punishment to imprisonment for those convicted of some nonviolent crimes, such as narcotics possession, criminal breach of trust, and alien smuggling. The immigration law, in effect since 2002, prescribes up to six strokes of the cane for both illegal immigrants and their employers. Judges routinely included caning in sentences of those convicted of such crimes as kidnapping, rape, and robbery. Some state Shari'a (Islamic) laws, which bind only Muslims, also prescribe caning (see Section 1.e.). The caning, which was carried out with a 0.5-inch-thick wooden cane, commonly caused welts and sometimes caused scarring. Males over 50 and women are exempted from caning. According to the provisions of the 2002 Child Act, male children 10 years of age and older may be given up to 10 strokes of a "light cane" (see Section 5).

Prison overcrowding was a serious problem. In July, Suhakam reported that overcrowding was a common feature in all prisons it visited. In August, the Government acknowledged that the nation's prisons held 42,284 inmates, 10,000 above designed capacity.

The law provides that young boys and girls may be placed in judicially approved places of detention. Children have the right to remain with their imprisoned mothers until the age of 3 years and can stay beyond that age with approval of the Director General of Prisons. Men and women were detained in separate facilities. Convicted prisoners were segregated from pretrial detainees.

Special security prisoners were detained in a separate detention center (see Section 1.d.). In 2003, a number of persons released from detention under the ISA claimed that during the initial stages of their detention they were subjected to intensive interrogation and disoriented by isolation, deliberately interrupted sleep, and abusive treatment by police (see Section 1.d.).

NGOs and international organizations involved with migrant workers and refugees made credible allegations of inadequate food and medical care, poor sanitation, and abuse by guards in government camps for illegal immigrants. According to reliable reports, this overcrowding and related poor health conditions contributed to the deaths of several detainees. Suhakam, which visited the camps in 2003, found detainees endured hot, uncomfortable, and cramped living conditions. During the year, hundreds of Acehnese and Burmese asylum seekers were detained in camps for illegal immigrants pending deportation to Indonesia and Burma (see Section 2.d.). Some individuals convicted of violating the immigration law were subject to caning. In 2003, Suhakam confirmed that they found detainees with fresh scars at Semenyih camp and said that it amounted to cruel and inhuman treatment. In September, the local press reported that 139 illegal immigrant detainees launched a hunger strike at

Semenyih detention camp to protest overcrowding, poor sanitary conditions and rotten food.

The Government does not have any agreement with the International Committee of the Red Cross that permits visits to prisoners. NGOs and the media generally were not permitted to monitor prison conditions. However, in June, the Government invited the media to inspect Kamunting prison in response to allegations that ISA detainees there were being abused. Access to illegal alien detention camps was restricted, although officials from the U.N. High Commissioner for Refugees (UNHCR) were given regular access to several camps to identify and interview potential refugees (see Section 2.d.). In addition, Suhakam officials visited various camps and prisons at different times during the year.

d. Arbitrary Arrest or Detention

The law permits police to arrest individuals for some offenses without a warrant, and police may hold suspects for 24 hours without charge. A magistrate may extend the period for up to 2 weeks. Although the police generally observed these provisions, Suhakam reported that in 2002 some detainees were held beyond the 2-week limit. Suhakam also noted that police sometimes released suspects and then quickly rearrested them on new but similar charges. In one 2002 case, a detainee was consecutively held in this manner for a total of 77 days. Police often denied detainees access to legal counsel and questioned suspects without giving them access to counsel. Police justified this practice as necessary to prevent interference in ongoing investigations. Judicial decisions generally upheld this practice. In July, the Royal Commission for Police Reform recommended that detention procedures be reviewed to prevent abuse.

Modeled on the British system, the Royal Malaysia Police (PDRM) is under the command of the IGP, who reports to the Minister of Internal Security. The IGP is responsible for organizing and administering the police force. The functions of the police generally are divided into five areas: The enforcement of law and order; the maintenance of national peace and security; the prevention and detection of crimes; the arrest and prosecution of offenders; and the gathering of security intelligence. Consisting of 80,000 officers, the PDRM generally was regarded as well organized and efficient. During the year, there were some allegations of corruption and police abuse of detainees. In 2003, the Prime Minister (who is concurrently Internal Security Minister) announced that a Royal Commission would be set up to review issues within the police force such as police brutality, poor service, and corruption. In a preliminary August report the Commission found that there were indications of corruption at every level and that excessive force was used against detainees. During the year, the PDRM in conjunction with Suhakam organized training courses throughout the country to inform police officers about the importance of human rights. In July, the IGP directed the Commander of the Police Training Center to include human rights awareness training in its training modules.

Three laws permit the Government to detain suspects without judicial review or the filing of formal charges: the ISA, the Emergency (Public Order and Prevention of Crime) Ordinance, and the Dangerous Drugs Act (Special Preventive Measures).

The ISA, enacted in 1960 during an active communist insurgency, empowers the police to hold for up to 60 days any person who acts "in a manner prejudicial to the security of Malaysia." The Internal Security Minister may authorize further detention for periods of up to 2 years. Some of those released before the end of their detention period are subject to "imposed restricted conditions" for the remainder of the originally authorized detention period. These conditions limit freedom of speech, association, and travel outside the country. Since the ISA's inception, over 4,000 persons have been detained under it.

Even when there are no formal charges, the ISA requires that the authorities inform detainees of the accusations against them and permit them to appeal to an advisory board for review every 6 months. However, advisory board decisions and recommendations are not binding on the Internal Security Minister, are not public, and often are not shown to the detainee. Local human rights NGOs claimed that the police at times intimidated and harassed family members of ISA detainees to prevent them from taking legal action against the police.

The 1988 amendments to the ISA circumscribed judicial review of ISA detentions. The Bar Council has asserted that ISA detentions should be subject to full judicial review; however, the courts did not concur with this interpretation and limited their review to procedural issues. Detainees freed by judicial order nearly always were detained again immediately. Following several successful procedural challenges to ISA detentions, in 2003, the Federal Court ruled that the courts should not intervene in matters of national security and public order.

According to the Government, the goal of the ISA is to control internal subversion. In October, the Government stated that there were 101 persons in detention under the ISA, of whom 87 were suspected of involvement in terrorism. Among those detained were members of the opposition Islamic Party (PAS), including Nik Adli, son of the PAS leader.

There were no new reports of the Government using the ISA against political opponents during the year; however, the ISA, and the threat of invoking the ISA, have in the past been used to intimidate and restrict political dissent. For example, in 2001, the Government used the ISA to detain 10 political activists who were leaders of, or closely associated with, the opposition National Justice Party (Keadilan), claiming that they represented a threat to national security. In 2002, the Federal Court ruled that the detentions were unlawful; however, as the Court's rulings focused on the police's initial 60-day detention order and not on the Internal Security Ministry's subsequent 2-year detention, the six remained in prison until 2003, when they were released. Two of those released claimed that their police interrogations were limited to questions about their political beliefs and personal life and not about the alleged offenses for which they initially were detained.

Opposition leaders and human rights organizations continued to call on the Government to repeal the ISA and other legislation that deprived persons of the right to defend themselves in court. In 2003, after nearly a year of reviewing the case, Suhakam publicly urged the Government to release the six Keadilan detainees and recommended that the ISA be rewritten to ensure that the Government could not use it against political opponents. Suhakam also recommended that ISA detainees have access to legal counsel within 24 hours of detention and to families within 48 hours. The Suhakam 2002 annual report noted that detention without trial constituted a violation of human rights. In its 2003 report, Suhakam said the ISA was used with greater restraint during the year.

The Government stated that the implementation of preventive detention measures to combat terrorism by foreign governments underscored the country's continued need for the ISA. However, in 2003, the Minister of Legal Affairs said that the Government was reviewing the ISA and would incorporate Suhakam's recommendations into its report.

Under the Emergency Ordinance, the Internal Security Minister may issue a detention order for up to 2 years against a person if he deems it necessary to protect public order, or for the "suppression of violence, or the prevention of crimes involving violence."

Provisions of the Dangerous Drugs Act (Special Preventive Measures) give the Government specific power to detain suspected drug traffickers without trial for up to 39 days before the Internal Security Minister must issue a detention order. Once an order is issued, the detainee is entitled to a hearing before a court, which may order the detainee's release. Suspects may be held without charge for successive 2-year intervals with periodic review by an advisory board, whose opinion is binding on the Minister. However, the review process contains none of the procedural rights that a defendant would have in a court proceeding. The police frequently detained suspected narcotics traffickers under this act after the traffickers were acquitted of formal charges. During the first 9 months of the year, the Government detained over 1,589 persons under the act.

The Restricted Residence Act allows the Minister of Internal Security to place criminal suspects under restricted residence in a remote district away from their homes for 2 years. The Ministry is authorized to issue the restricted residence orders without any judicial or administrative hearings. The Government continued to justify the act as a necessary tool to remove suspects from the area where undesirable activities were being conducted. During the year, the press reported the arrests of three organized crime figures allegedly involved in prostitution and human trafficking who were subsequently detained under the Restricted Residence Act. In September, the Deputy Minister of Internal Security told the press that 140 persons had been placed on restriction during the year under this act.

Immigration laws were used to detain illegal immigrants. The detainees were not accorded any administrative or judicial hearing and were released only after their employers proved their legal status. Those who were able to produce legal documents normally were released immediately; those who were unable to prove their legal status often were held for extended periods before deportation. Illegal immigrants were kept in detention camps that were separate from prisons. No codified legal distinction is made between illegal workers, refugees, and trafficking victims (see Sections 1.c. and 2.d.).

Crowded and understaffed courts often resulted in lengthy pretrial detention, sometimes lasting several years.

The Criminal Procedure Code allows the detention of a person, whose testimony as a material witness is necessary in a criminal case, if that person is considered likely to flee.

e. Denial of Fair Public Trial

The Constitution provides for an independent judiciary; however, over the last 20 years government action, constitutional amendments, legislation restricting judicial review, and other factors limited judicial independence and strengthened executive influence over the judiciary. The secular legal system is based on English common law. Trials are public, although judges may order restrictions on press coverage. Defendants have the right to counsel, bail is usually available, and strict rules of evidence apply in court. Defendants may make statements for the record to an investigative agency prior to trial. Limited pretrial discovery in criminal cases impeded defendants' ability to defend themselves.

High Courts have original jurisdiction over all criminal cases involving serious crimes. Minor civil suits are heard by Sessions Courts. Juvenile Courts try offenders below 18 years of age. The Special Court tries cases involving the King and the Sultans. The Court of Appeal has appellate jurisdiction over High Court and Sessions Court decisions. The Federal Court, the country's highest court, reviews Court of Appeal decisions.

The Government limited judicial independence significantly through a 1988 constitutional amendment that provided that judicial powers would be conferred by Parliament rather than being vested directly in the courts. The amendment also conferred certain judicial powers on the Attorney General, including the authority to instruct the courts on which cases to hear, the power to choose venues, and the right to discontinue cases. The Attorney General has control and direction of all criminal prosecutions under the Criminal Procedure Code and has assumed responsibility for judicial assignments and transfers. Since 1988, senior judges have been appointed based on the recommendation of the Prime Minister.

In recent years, members of the bar, NGOs, and other observers have expressed serious concern about the general decline of judicial independence, citing a number of high-profile instances of arbitrary verdicts, selective prosecution, and preferential treatment of some litigants and lawyers. The most widely criticized such case was that of former Deputy Prime Minister Anwar

Ibrahim. In 1998, after a peaceful demonstration in which he called for then-Prime Minister Mahathir's resignation, Anwar was detained for alleged corruption and sodomy. In a 1999 trial flawed by political interference, Anwar was convicted of corruption and sentenced to 6 years in prison. Appeals in 2000 and 2002 were denied, and Anwar completed the sentence in 2003 after it was reduced to 4 years for good behavior. In September, the Federal Court, the country's highest, dismissed Anwar's petition to reconsider its 2002 appeal decision, leaving Anwar ineligible to participate in politics until 2008.

In 2000, Anwar was convicted on a separate charge of sodomy and sentenced to 9 years in prison, to be served consecutively with the corruption sentence. In September, the Federal Court ruled that the trial court had misdirected itself, and that Anwar's conviction for sodomy was unjust. The panel vacated the conviction and ordered Anwar released. International observers applauded the decision and credited Prime Minister Abdullah for encouraging greater judicial independence. Amnesty International (AI) hailed the decision as "an historic milestone in the restoration of confidence in the rule of law and respect for human rights in Malaysia."

Defendants are presumed innocent and may appeal court decisions to higher courts. The Courts of Judicature Act limits a defendant's right to appeal in some circumstances. The Government stated that the limits expedited the hearing of cases in the upper courts, but the president of the Bar Council said that the act imposed too many restrictions on appeals.

The Essential (Security Cases) Regulations restrict the right to a fair trial by lowering the standard for accepting self incriminating statements by defendants as evidence in firearm and certain national security cases. The regulations also allow the authorities to hold an accused for an unspecified time before making formal charges.

Even when the Essential Regulations are not invoked, police sometimes used other tactics to limit the legal protections of defendants. For example, during a trial, police may summon and interrogate witnesses who have previously given testimony that was not helpful to the prosecution. Human rights advocates accused police of using this tactic to intimidate witnesses. Police also have used raids and document seizures to harass defendants.

Contempt of court charges also restricted the ability of defendants and their attorneys to defend themselves; however, the use of such charges appeared to be decreasing.

Certain provisions of the Anti-Corruption Act impinge on the presumption of a defendant's innocence. A 1997 amendment to the act requires that an accused prove that he acquired monetary and other assets legally.

Shari'a laws administered by state authorities through Islamic courts bind Muslims, the large majority of whom are ethnic Malays. These laws vary from state to state. In 2002, the Government established a committee to recommend ways to harmonize Shari'a laws throughout the country; any recommendations must be adopted by individual state legislatures. The Shari'a courts do not give equal weight to the testimony of women. Many NGOs also complained that women did not receive fair treatment from Shari'a courts, especially in matters of divorce and child custody (see Section 2.c.).

Indigenous peoples in Sarawak and Sabah have a system of customary law to resolve matters such as land disputes between tribes. Additionally, Penghulu (village head) courts may adjudicate minor civil matters, but these were rarely used.

The military has a separate system of courts.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The law prohibits such practices; however, authorities infringed on citizens' privacy rights in some cases. Provisions in the security legislation allow the police to enter and search without a warrant the homes of persons suspected of threatening national security (see Section 1.d.). Police also may confiscate evidence under these acts. Police used this legal authority to search homes and offices, seize books and papers, monitor conversations, and take persons into custody without a warrant.

The Anti-Corruption Act empowers the Attorney General to authorize the interception of mail and the wiretapping of telephones. Information obtained in this way is admissible as evidence in a corruption trial.

The law permits the Internal Security Ministry to place criminal suspects under restricted residence in a remote district away from their homes for 2 years (see Section 1.d.).

The Government bans membership in unregistered political parties and in unregistered organizations (see Section 2.b.).

Certain religious issues posed significant obstacles to marriage between Muslims and adherents of other religions (see Section 2.c.).

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The Constitution provides for freedom of speech and freedom of the press; however, some important legal limitations exist, and in practice, the Government restricted freedom of expression, and journalists practiced self-censorship. According to the Government, restrictions on this freedom were imposed to protect national security, public order, and friendly relations with other countries.

The Constitution provides that freedom of speech may be restricted by legislation "in the interest of security (or) public order." For example, the Sedition Act prohibits public comment on issues defined as sensitive, such as racial and religious matters. In practice, the Sedition Act, Official Secrets Act (OSA), criminal defamation laws, and some other laws were used to restrict or to intimidate dissenting political speech.

In 2003, the Government amended the election law to make it an offense for a candidate to "promote feelings of ill-will, discontent, or hostility." Violators could be disqualified from running for office, and during the March national elections, both the Elections Commission Chairman and the Prime Minister warned candidates not to violate the amended law (see Section 3). No one was charged under the provision.

In past years, senior government officials ascribed seditious or treasonous motives to critics of government policies, although many persons still criticized the Government publicly. In 2003, government officials warned that political parties that raised sensitive issues and threatened national stability would be charged under the Sedition Act. In 2003, the editor of the opposition paper *Harakah* was fined \$1,300 (5,000 ringgit) for publishing an allegedly seditious article in 1999 regarding the Anwar Ibrahim trial. In 2002, opposition leader Lim Kit Siang and a number of his colleagues were arrested for distributing leaflets that criticized then-Prime Minister Mahathir's declaration that the country was an Islamic state. During the year, there were no reports of the Government using the Sedition Act to silence critics.

In the past, the Bar Council and other NGOs called for a review of certain provisions of the OSA, accusing the Government of using the act to cover up corruption. In 2000, Ezam Noor, a former aide to Anwar Ibrahim, was charged under the OSA with disclosing secret Anti Corruption Agency reports to the media. In 2002, Ezam was convicted of the charge and sentenced to 2 years in prison, but he was released on bail in 2003, and, in April, the Court of Appeal vacated the lower court's judgment. The appellate judge strongly criticized the Government's handling of the case and described the legal provisions used against Ezam as "obnoxious, draconian and oppressive."

The English and Malay press provided generally uncritical coverage of government officials and policies and usually gave only limited and selective coverage to political views of the opposition or political rivals. Editorial opinion almost always reflected government positions on domestic and international issues. However, during the year the mainstream press printed interviews with senior opposition leaders that included criticism of government policy. Observers believed this was an indication that the administration of Prime Minister Abdullah had relaxed some press restrictions.

Print journalism was dominated by eight daily newspapers—two each in English and Malay and four in Chinese. One of the parties in the ruling coalition owned or controlled a majority of shares in each of the English and Malay dailies, and two of the Chinese dailies. Politically well-connected tycoons owned the other two Chinese language newspapers. Self-censorship and biased reporting in the print media were not uniform and the English-, Malay-, and Chinese-language press sometimes provided balanced reporting on sensitive issues.

The Printing Presses and Publications Act (PPPA) limits press freedom. Under the act, domestic and foreign publications must apply annually to the Government for a permit. The act was amended to make the publication of "malicious news" a punishable offense, to expand the Government's power to ban or restrict publications, and to prohibit court challenges to suspension or revocation of publication permits. According to the Government, this amendment was made to ensure that "distorted news" was not disseminated to the public. Government power over annual license renewal and other policies created an atmosphere that inhibited independent or investigative journalism and resulted in extensive self-censorship. In 2002, the then-Deputy Home Affairs Minister told Parliament that, from the beginning of 2001 until October 2002, 1,345 publications and printing premises were inspected and 2,305 volumes of publications were confiscated under the act. Government officials continued to argue that the act helped to preserve harmony and to promote peaceful coexistence in a multiracial country.

The Government sometimes directly restricted the dissemination of information that it deemed embarrassing or prejudicial to national interests. For example, the Government continued its policy of not allowing public disclosure of air pollution index readings or deaths due to dengue fever. On August 18, the official news agency, Bernama, conveyed an instruction to all media, reportedly from the Prime Minister's Department, not to report anything related to the outbreak of bird flu. On August 19, the Prime Minister's Department denied that the instruction had come from it, and the Deputy Minister of Information told reporters that although Bernama had the responsibility to report and express government policy, it did not have the right to instruct other media on how to treat the news.

In 2003, the Kuala Lumpur Magistrate Court sentenced human rights monitor Irene Fernandez to 12 months' imprisonment for malicious publication of false material. The sentence was suspended pending appeal. The charge under the PPPA stemmed from a 1995 memorandum entitled "Abuse, Torture and Dehumanized Treatment of Migrant Workers at Detention Camps." The magistrate rejected Fernandez's interviews as hearsay and noted that Fernandez had made no effort to visit the camps personally (the Government generally does not allow NGOs to visit the camps).

Publications of opposition parties, social action groups, unions, and other private groups actively covered opposition parties and

frequently printed views critical of government policies. However, the Government retained significant influence over these publications by requiring the annual renewal of publishing permits and limiting circulation only to organization members. In the past, the PAS newspaper, Harakah, was the target of several ruling party-sponsored libel suits. Harakah was the only major Malay- or English-language print media forum for opposition views, and its circulation rivaled that of mainstream newspapers. Since 2000, under government stricture, Harakah has been limited to publishing only twice monthly instead of twice a week.

Most major newspapers have online editions, which generally fall outside government regulations, as they are not required to have publication permits. In 2003, the ruling party youth movement, United Malays National Organization Youth (UMNO Youth), lodged a complaint against independent Internet news provider Malaysiakini over a letter published on the website that allegedly contained seditious remarks. In response, police raided the daily's offices, confiscating 15 computers and 4 servers, and shutting down the company's online service for over 10 hours. While the Government continued to deny Malaysiakini formal press accreditation, its reporters were allowed to cover government functions and ministers' press conferences.

Printers, who also must have their permits renewed annually, often were reluctant to print publications that were critical of the Government.

In 2003, the Government interfered with the timely release and distribution of several foreign magazines, including the Far Eastern Economic Review and The Economist. Government officials, including then-Prime Minister Mahathir, continued to accuse the foreign media of harboring ill intentions toward the country and of deliberately misrepresenting the country's political and economic environment by focusing on negative news. In 2003, the then-Deputy Home Minister said the Government would consider a ban against any foreign magazine that made unfounded allegations against the country and its leaders.

The electronic media was restricted more tightly than the print media. Radio and television stations almost uniformly were supportive of the Government's news coverage and commentary. News of the opposition was restricted tightly and reported in a biased fashion. In the period before the March elections, opposition representatives said they were unable to have their views heard and represented on the country's television and radio stations.

During the year, two new television stations joined an already crowded market of three stations and one cable network. The privately owned television stations had close ties to the ruling coalition and were unlikely to provide a forum for the opposition parties. In 2002, the Government did not approve a longstanding license application for a state radio station in opposition controlled Kelantan State. Broadcasting licenses only permit Malay-language news from 8:00 to 9:00 p.m., except on a Ministry of Information channel. During the year, one of the new stations appealed the terms of its license agreement and began broadcasting the 8:00 p.m. news in English. Their appeal was denied, and the English broadcasts ceased. Internet television faced no such restrictions. In 2001, PAS launched its own Internet television studio, with daily broadcasts.

The Government censored books and films for profanity, nudity, sex, violence, and certain political and religious content. Television stations censored programming in line with government guidelines. Some foreign newspapers and magazines were banned, and, infrequently, foreign magazines or newspapers were censored, most often for sexual content. However, the increased prevalence of the Internet vitiated such restrictions. The Government maintained a "blacklist" of local and foreign performers, politicians, and religious leaders who were not allowed to appear on television or radio broadcasts. The Government continued to try to block the production, distribution, and sales of unauthorized video compact discs (VCDs) and digital video discs (DVDs), especially those with pornographic or sensitive political content.

The Communications and Multimedia Act (CMA) requires certain Internet and other network service providers to obtain a license. In the past, the Government stated that it did not intend to impose controls on Internet use, but noted that it would punish the "misuse" of information technology under the CMA. During the year, the Government did not use licensing provisions under the CMA to interfere with Internet access or to restrict Internet content.

The Government generally restricted remarks or publications that might incite racial or religious disharmony; it also attempted to restrict the content of sermons at mosques in the states controlled by the ruling coalition. Some state governments banned certain Muslim clergymen from delivering sermons. The Religious Affairs Department continued to conduct background checks on all clergymen. The Government also cracked down on the distribution and sale of the opposition party's VCDs and audiocassettes.

The Government places some restrictions on academic freedom, particularly the expression of unapproved political views, and the Government enforced restrictions on teachers and students who expressed dissenting views. In 2002, the Government began to require that all civil servants, university faculty, and students sign a pledge of loyalty to the King and the Government. Opposition leaders and human rights activists claimed that this was intended to restrain political activity among civil servants, academics, and students. Although academics sometimes were publicly critical of the Government, there was clear self censorship among public university academics whose career advancement and funding depended on the Government. In 2001, senior government officials said that teachers who opposed the Government and students who took part in anti-government activities would face disciplinary actions, including dismissal and expulsion. In 2003, a Universiti Teknologi Malaysia lecturer who was pursuing his doctorate had his scholarship revoked after he was found to have been involved in anti-government activity. Also in 2003, seven university students were denied the right to continue their studies after being charged with illegal assembly.

Private institution academics practiced self-censorship as well, fearing that the Government might revoke the licenses of their institutions. The law also imposes limitations on student associations and student and faculty political activity (see Section 2.b.).

The Government has long stated that students should be apolitical and used that assertion as a basis for denying parties access to student forums. According to student leaders, students who signed anti-government petitions sometimes were expelled or fined. The Government enforced this policy selectively and did not refrain from spreading government views on political issues among students and teachers.

b. Freedom of Peaceful Assembly and Association

The Constitution provides for freedom of peaceful assembly; however, in practice, the Government placed significant restrictions on this right. This right may be limited in the interest of security and public order, and the Police Act requires police permits for all public assemblies except for workers on picket lines. The decision to grant a permit theoretically rests with the district police chief; however, in practice, senior police officials and political leaders influenced the grant or denial of some permits. Police granted permits routinely to government and ruling coalition supporters; however, they used a more restrictive policy with government critics. In 2003, opposition activists attending a political forum organized by PAS were arrested for illegal assembly. Similarly, in 2003, an outdoor march in support of rape victims was cancelled after police refused a permit on grounds of "public security." However, in the period before the March elections the Elections Commission announced that public rallies by political parties would be permitted, subject to appropriate police permits. Although permits often were difficult to obtain due to the short duration (7 days) of the campaign period, police generally allowed many rallies to be held without interference (see Section 3).

During the year, Suhakam released its fourth annual report, which reiterated the Commission's earlier criticism of government imposed restrictions on freedom of assembly. In 2001, Suhakam released a report highlighting the fact that the right of assembly is provided for in the Constitution; it recommended easing police permits for gatherings, setting up a special "speaker's corner," and reviewing laws that restrict the right to free assembly. In April, police arrested 15 persons for taking part in an illegal assembly on the anniversary of the corruption conviction of Anwar Ibrahim. The 13 men and two women were arrested in front of Suhakam's offices in Kuala Lumpur.

The Constitution provides for the right of association; however, the Government placed significant restrictions on this right and certain statutes limit this right. Under the Societies Act, only registered, approved organizations of seven or more persons may function as societies. The Government sometimes refused to register organizations or imposed conditions when allowing a society to register. The Government prohibited the Communist Party and affiliated organizations from registering and has blocked the registration of the Socialist Party of Malaysia since 1999 (see Section 1.f.). The Government also has the power to revoke the registration of an existing society for violations of the act, a power that it enforced selectively against political opposition groups.

The Universities and University Colleges Act also restricts freedom of association. This act mandates university approval for student associations and prohibits student associations and faculty members from engaging in political activity. Many students, NGOs, and opposition political parties called for the repeal or amendment of the act. A number of ruling coalition organizations and politicians also supported reexamination of the act, but the Government argued that the act still was necessary.

c. Freedom of Religion

The Constitution provides for freedom of religion; however, the Government placed some restrictions on this right. Sunni Islam is the official religion, and the practice of Islamic beliefs other than Sunni Islam was significantly restricted. Non-Muslims, which include large Buddhist, Christian, Hindu, and Sikh communities, were free to practice their religious beliefs with few restrictions. The Government provides financial support to an Islamic religious establishment and also provides more limited funds to non-Islamic religious communities. State authorities impose Islamic religious laws administered through Islamic courts on all ethnic Malays (and other Muslims) in some matters but generally did not interfere with the religious practices of the non-Muslim community. In 2003, then-Prime Minister Mahathir used anti-Semitic language during his address to the summit of the Organization of the Islamic Conference (OIC). Prime Minister Abdullah, who succeeded Mahathir 2 weeks after the OIC speech, subsequently emphasized religious tolerance towards all faiths. During the year, the Government promoted Islam "Hadhari," which emphasized tolerance towards other religions and a moderate, progressive interpretation of Islam.

The Registrar of Societies, under the Ministry of Home Affairs, registers religious organizations. Registration enables organizations to receive government grants and other benefits.

In practice, Muslims are not permitted to convert to another religion. In several recent rulings, secular courts have ceded jurisdiction to the Islamic courts in matters involving conversion to or from Islam. In 2000, an Islamic court sentenced four persons to 3-year prison terms for not recanting their alleged heretical beliefs and "return(ing) to the true teachings of Islam." The court rejected their argument that they were not subject to Islamic (Shari'a) law because they had ceased to be Muslims. Dismissing their appeal, the Court of Appeal ruled in 2002 that only the Islamic court is qualified to determine whether a Muslim has become an apostate. In July, the Federal Court upheld the Court of Appeal decision and returned the case to the Shari'a court to enforce the sentence.

In April, the Kuala Lumpur High Court held that only the Islamic Court had jurisdiction over a suit by a non-Muslim mother to nullify the conversion of her two children to Islam without her agreement. The father converted to Islam after he became estranged from his wife and allegedly converted his two infant children in order to gain custody over them. The Malaysian Consultative Council of Buddhism, Christianity, Hinduism, and Sikhism (MCCBCHS) said the ruling "tramples over the rights of non-Muslim parents." The mother filed an appeal and in July the Court of Appeal granted custody to the mother but prohibited

the mother from influencing the children's religious education.

The Government generally respected non-Muslims' right of worship; however, state governments have authority over the building of non-Muslim places of worship and the allocation of land for non-Muslim cemeteries. Approvals for building permits sometimes are granted very slowly. In 2003, the Minister of Housing and Local Government announced that building permit approvals would no longer be required for construction of places of worship. However, minority religious groups reported that state governments still sometimes blocked construction using restrictive zoning and construction codes.

Proselytizing of Muslims by members of other religions was strictly prohibited, although proselytizing of non-Muslims faced no obstacles. The Government discouraged but did not ban distribution in peninsular Malaysia of Malay language translations of the Bible, Christian tapes, and other printed materials. The distribution of Malay language Christian materials faced few restrictions in the East Malaysia states of Sabah and Sarawak.

While representatives of non-Muslims do not sit on the immigration committee that approves visa requests from members of the clergy, the MCCBCHS is asked for its recommendation.

The Government continued to monitor the activities of the Shi'a minority, and state religious authorities reserved the right to detain members of what they considered Islamic "deviant sects," i.e., groups that do not follow the official Sunni teachings, without trial under the ISA. According to the Government, no individuals were detained under the ISA for religious reasons by year's end.

The Government is concerned that "deviationist" teachings could cause divisions among Muslims. Members of such groups can be arrested and detained, with the consent of the Islamic court, in order to be "rehabilitated" and returned to the "true path of Islam." The Selangor Religious Department detained 66 members of a deviationist group in 2003 and arrested 96 followers of another deviationist sect in April.

The Government generally restricted remarks or publications that might incite racial or religious disharmony. This included some statements and publications critical of particular religions, especially Islam. The Government also restricted the content of sermons at mosques. In recent years, both the Government and the opposition Islamic party have attempted to use mosques in the states they control to deliver politically oriented messages. Several states have attempted to ban opponent-affiliated imams from speaking at mosques. Some states also have announced measures including more vigorously enforcing existing restrictions on the content of sermons and replacing mosque leaders and governing committees.

For Muslim children, religious education according to a government-approved curriculum is compulsory. There were no restrictions on home instruction, and private schools may offer a non-Islamic religious curriculum as an option for non-Muslims.

In 2002, the Government implemented a policy that requires all Muslim civil servants to attend Islamic classes taught by government-approved teachers.

In family and religious matters, all Muslims are subject to Shari'a law. According to some women's rights activists, women are subject to discriminatory interpretations of Shari'a law and inconsistent application of the law from state to state.

In the past, state governments in Kelantan and Terengganu have made efforts to restrict Muslim women's dress. However, since the defeat of the opposition Islamic party (PAS) in Terengganu and its near defeat in Kelantan in the March elections, which many observers interpreted as a rejection by voters of the strict form of Islam promoted by PAS, the two state governments have backed away from enforcing dress codes for any women.

Efforts by the PAS-led governments of Terengganu and Kelantan to implement Shari'a criminal law (see Section 5), which would impose Islamic penalties for theft, robbery, illicit sex, drinking alcohol, and the renunciation of Islam, have been challenged in Federal Court, and the cases were still pending as of year's end. In 2003, the then-Deputy Prime Minister stated that police could not enforce Islamic criminal law ("hudud") until the Attorney General decided on the matter and that the Criminal Procedure Code was still in effect in Terengganu.

The Government has a comprehensive system of hiring and other preferences for ethnic Malays and members of a few other groups, known collectively as "bumiputras," most of whom are Muslim (see Section 5).

For a more detailed discussion, see the [2004 International Religious Freedom Report](http://www.state.gov/g/drl/rls/hrrpt/2004/41649.htm).

d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

The Constitution provides for these rights, and the Government generally respected them in practice; however, the Government restricted these rights in some circumstances. The eastern states of Sabah and Sarawak control immigration and require citizens from peninsular Malaysia and foreigners to present passports or national identity cards for entry. In 2002, the Federal Court ruled that Sabah's exclusive control on immigration was provided for in the Constitution and could not be challenged. In 2003, a prominent local human rights activist was denied entry to Sarawak, allegedly due to her anti-logging positions, and

returned to peninsular Malaysia. NGOs claimed that some citizens were blacklisted and not permitted to travel outside of Malaysia as they might "tarnish the reputation" of the country.

The Government regulated the internal movement of provisionally released ISA detainees. The Government also used the Restricted Residence Act to limit movements of those suspected of some criminal activities (see Section 1.d.).

Citizens must apply for government permission to travel to Israel.

The country is not a party to the 1951 U.N. Convention Relating to the Status of Refugees or its 1967 Protocol; and the Government has not established a system for providing protection to refugees. It sometimes granted temporary refuge to asylum seekers. In April, the Prime Minister offered to establish refugee camps in northern Malaysia to house potential refugees escaping violence in southern Thailand.

In 2003, the police arrested over 240 Acehnese asylum seekers outside the UNHCR office in Kuala Lumpur. Following the arrests, then-Prime Minister Mahathir threatened that they would not be allowed to seek political asylum and would be deported; however, many of those arrested subsequently were resettled to other countries. In July, the Government arrested 40 asylum seekers holding UNHCR temporary protection papers. International organizations and a number of human rights NGOs protested. During the year, the Government continued to deport some asylum seekers and refugees but has also allowed certain asylum seekers and persons of concern to remain pending resettlement to other countries. Reportedly the Government had decided to accord some 10,000 Rohingyas (Muslims from Burma) refugee status.

In 2003, Suhakam called on the Government to reconsider caning as a penalty for illegal immigrants alleging that it amounts to cruel and inhumane treatment. The new immigration law, in effect since 2002, provides for 6 months in prison and up to six strokes of the cane for immigration violations. In practice, due to delays in processing travel documents, many illegal immigrants were detained in camps for over a year (see Section 1.d.).

The Government does not distinguish between asylum seekers and illegal immigrants, and detained them in the same camps. Detention facilities were overcrowded and lacked medical facilities. Local human rights NGOs alleged that detainees were provided inadequate food and sometimes were abused.

The Constitution provides that no citizen may be banished or excluded from the Federation. However, according to the terms of a 1989 peace agreement, Chin Peng, the 80-year-old former leader of the communist insurgency in the country, lives in exile in Thailand and has been denied permission to return to the country.

Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

The Constitution provides citizens with the right to change their government peacefully, and citizens exercised this right in practice through periodic elections; however, while votes generally were recorded accurately, there were irregularities that affected the fairness of elections.

In practice, opposition parties were unable to compete on equal terms with the governing coalition (which has held power at the national level since independence in 1957) because of significant restrictions on campaigning, freedom of assembly, freedom of association, and access to the media. Nevertheless, opposition candidates campaigned actively, with some success in state and national elections. In the March national elections, opposition parties captured 20 of 199 parliamentary seats and 52 out of 453 state seats.

The country has a parliamentary system of government with a bicameral legislature. National elections are required for the lower chamber at least every 5 years and have been held regularly since 1957. Members of the upper chamber, the Senate, are appointed. The Malay-based UMNO party dominates the ruling National Front coalition. Since 1969, the National Front coalition always has maintained at least a two-thirds majority in parliament, which enables the Government to amend the Constitution at will. Over the years, power increasingly has been concentrated in the Prime Minister. In 2003, Mahathir Mohamad, who had been Prime Minister since 1981, retired and relinquished power to his deputy, Abdullah Badawi. In national elections held in March, the ruling coalition captured 90 percent of total parliamentary seats.

The lack of equal access to the media was one of the most serious problems encountered by the opposition in the March national elections (see Section 2.a.). Government-owned stations and the country's private television stations had virtually no impartial reporting on the opposition. The mainstream English- and Malay-language newspapers carried biased coverage of domestic politics as well. In addition, opposition parties alleged that they faced difficulties in placing paid advertisements in newspapers.

Opposition leaders claimed that the Election Commission, which is responsible for holding and monitoring elections, did not carry out its duties impartially. The Election Commission is nominally independent but was perceived to be under the control of the Government. NGOs were permitted to form independent election watch organizations, but were accorded no special privileges.

There were numerous opposition complaints of irregularities by election officials during the March campaign; however, most observers concluded that they did not substantially alter the results. Complaints included unregistered names, broken computers, and late opening of polling stations, all of which prevented some persons from voting. In the state of Selangor, Election Commission officials extended the polling period by 2 hours in apparent contravention of elections laws. The Election Commission blamed many of the glitches on last-minute increases in the number of polling stations and associated voter rolls, which the Commission alleged threw the process into disarray. Opposition leaders complained that local government officials who served as election officers were not always neutral.

More serious allegations were lodged of voter rolls being inflated by illegally registered "phantom" voters, who reportedly included voters from other districts brought in to vote in tightly contested districts, non-registered voters using fictitious names or the names of dead voters still listed on the voter rolls, and non-citizens illegally registered to vote. The opposition claimed that 70,000 phantom voters in Terengganu were used to swing the vote in favor of the ruling coalition. Opposition parties also complained about their inability to monitor postal votes (absentee ballots) cast by police and military personnel. The Government, citing security concerns, did not allow party agents to monitor postal vote boxes on military and police installations.

Ballots were marked with a serial number that could be matched against a voter's name. While there was no evidence that the Government ever traced individual votes, some opposition leaders alleged that the potential to do so influenced some voters, particularly civil servants.

The Constitution states that parliamentary constituencies should have approximately equal numbers of eligible voters, although the same section states that greater weight should be given to rural constituencies. The Government conducted a nationwide electoral redistricting exercise during 2002. In 2003, 25 new parliamentary seats were added primarily in states in which the ruling coalition is strong. The opposition complained that the two states it controlled prior to the March elections did not get any new seats and that the redistricting was undertaken by the Government to weaken the opposition. Observers agreed that the redistricting favored Government candidates for parliamentary seats but believed it had less influence on elections for state seats.

The Elections Commission lifted the ban on political rallies for the March elections; however, to hold a rally, organizers needed to file an application with the police 14 days in advance of the proposed event. With only 17 days between the announcement of the election and polling, and only 7 days of formal campaigning permitted, it was difficult to comply with this requirement. Nonetheless, the opposition held many rallies during the campaign.

In 2003, Parliament amended the election law making it an offense for a candidate to "promote feelings of ill-will, discontent or hostility." The Elections Commission warned that violators would be disqualified. Opposition candidates complained that this law restricted their ability to criticize government policies at public functions.

Under the electoral law, unsuccessful candidates may appeal election results to special election courts in instances of alleged fraud, vote tampering, or other infractions of electoral rules. However, in 2002, Parliament passed an amendment to the electoral law forbidding judicial scrutiny of voter rolls after the Election Commission has certified them.

Over the years, Parliament's function as a deliberative body has deteriorated. Legislation proposed by the Government rarely was amended or rejected. Legislation proposed by the opposition never was given serious consideration. Opposition opportunities to hold legislation up to public scrutiny have diminished. In September, a member of Parliament from the opposition Democratic Action Party was suspended without pay for 6 months after failing to apologize to the parliamentary Speaker for "misleading the House" on the question of whether or not M.P.s had to raise their hands when taking their oaths of office. The 1995 parliament amended its rules to strengthen the power of the Speaker and to curb parliamentary procedures frequently used by the opposition. The amendments empowered the Speaker to ban members he considered unruly for up to 10 days, imposed limits on deputies' ability to pose supplementary questions and revisit non-germane issues, and established restrictions on the tabling of questions of public importance. Further measures in 1997 and 1998 limited even more severely members' opportunities to question and debate government policies. In 2001, an amendment to the parliamentary Standing Orders permitted the Speaker to edit written copies of members' speeches before the speeches were delivered. Nonetheless, Government officials often faced sharp questioning in Parliament, although this was not always reported in detail in the press.

After the 1969 intercommunal riots, the Government abolished elected local government in favor of municipal committees and village chiefs appointed by state governments. Some politicians and NGO activists advocated the reintroduction of local government elections. Even some ruling party municipal officials noted that local bodies were simply "rubber stamps" for the Government.

In recent years there has been a widely held perception of widespread corruption and cronyism within the ruling coalition and in government institutions. In his first few months in office Prime Minister Abdullah publicly denounced corruption, canceled a high-profile project tainted by cronyism, called for strengthening of the Anti-Corruption Agency, proposed the creation of a civil service ethics training institute, and pushed government institutions to be more responsive to the public. In February, both the former managing director of a government-owned steel company and the then-federal Minister for Land and Cooperative Development were arrested in separate cases on corruption-related charges. In November, UMNO suspended 16 members for possible vote buying in party elections.

Women faced no legal limits on participation in government and politics, and the Government proposed a "plan of action for the

advancement of women" to redress inequalities that did exist. At year's end, 3 of 33 cabinet ministers were women. Women held 20 of 193 seats in the House of Representatives, and they held 19 of 70 seats in the Senate. In 2003, noting the low percentage of women in the legislature, the Minister of Women, Family and Community Development asserted, "It is a simple fact of life that women operate in a very unequal workplace environment." In August, the Prime Minister announced that 30 percent of decision-making posts in Government would be allocated to women.

Ethnic minorities were represented in cabinet-level positions in Government, as well as in senior civil service positions. The political dominance of the Malay majority meant, in practice, that ethnic Malays held the most powerful senior leadership positions. Non-Malays filled 10 of the 35 cabinet posts and 20 of 38 deputy minister positions. An ethnic Chinese leader of a component party of the ruling coalition was Chief Minister of Penang State.

Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A number of domestic and international NGOs, including the Bar Council and other public interest groups, devoted considerable attention to human rights. The Government generally tolerated their activities but often did not respond to their inquiries or press statements. Under Prime Minister Abdullah, there generally was a more cooperative atmosphere toward human rights NGOs. The 16-member commission established to conduct a review of the police included an official of the opposition political party PAS, the president of the national chapter of Transparency International, the president of the Bar Council, and the executive secretary of Women's Aid Organization. In May, the Prime Minister met with representatives of 30 NGOs involved with human rights, social work, native rights, and environment and stated that he valued their role as "watchdogs of society." Also in May, the Kuala Lumpur High Court released human rights activist Irene Fernandez' passport allowing her travel to an overseas conference (Fernandez had been convicted in 2003 on a charge of "publishing false news.") In June, the police joined with Fernandez' organization Tenaganita to establish a 24-hour hotline to assist foreign domestic workers who were abused or cheated by their employers.

The Government generally did not encourage international human rights organizations to form domestic branches; however, it usually did not restrict access by representatives of those organizations. The Government did not allow AI to set up a branch as an NGO; however, AI incorporated itself as a business and was able to function much like an NGO.

Suhakam has come to be seen by many analysts as a credible monitor of the human rights situation in the country and a check on police activities that previously lacked oversight. Suhakam is not empowered to inquire into allegations relating to ongoing court cases and must cease its inquiry if an allegation under investigation becomes the subject matter of a court case. In July, in its fourth annual human rights report, Suhakam criticized deaths in police custody and detentions without trial, repeated its opposition to government-imposed restrictions on freedom of assembly, reiterated concerns about the ISA, and highlighted the need to develop a national plan of action to counter trafficking in persons.

During the year, Suhakam commissioners traveled throughout the country to educate community leaders, including police officials, on the purposes of the Commission and the importance of human rights. Commissioners also made several visits to prisons throughout the country to monitor conditions. In 2003, Suhakam released a report on the condition of ISA detainees. The report noted some human rights violations and outlined 18 recommendations aimed at improving conditions. Some observers credited Suhakam with the 2003 release of six opposition activists detained under the ISA.

Analysts acknowledged Suhakam as one of the few institutions in society with any ability to challenge, however tentatively, executive control. In 2003, Suhakam itself noted that a major challenge that remained unresolved was the slow government response to their reports on major issues that touched on fundamental liberties. In 2003, the then-Deputy Prime Minister (now Prime Minister) praised Suhakam for playing a positive and constructive role in the national dialogue on human rights.

Section 5 Discrimination, Societal Abuse, and Trafficking in Persons

The Constitution provides for equal protection under the law and prohibits discrimination against citizens based on religion, race, descent, or place of birth. In 2001, Parliament unanimously approved a constitutional amendment barring discrimination on the basis of sex; however, discrimination based on some of these factors persisted. For example, government policies gave preferences to ethnic Malays in housing, home ownership, the awarding of government contracts, educational scholarships, and other areas. Neither the Constitution nor other laws explicitly prohibited discrimination based on physical or mental disabilities, but the Government promoted greater public acceptance and integration of persons with disabilities.

Women

Violence against women remained a problem. Reports of rape and spousal abuse drew considerable government, NGO, and press attention. According to the local NGO Women's Aid Organization (WAO), there were over 2,500 cases of domestic violence reported during the year.

The Domestic Violence Act addresses violence against women in the home; however, women's groups criticized the act as inadequate and called for amendments to strengthen it. In their view, the act fails to protect women in immediate danger by requiring separate reports of abuse to be filed with both the Welfare Department and the police, causing delay in the issuance of

a restraining order against the perpetrator. Women's rights activists also highlighted the fact that, because the act is a part of the Penal Code, legal protection for victims is limited to cases in which visible evidence of physical injury is present, despite its interpretation to include sexual and psychological abuse. In June, WAO said that the lack of co operation among the police, the social welfare department, and the judiciary continued to be a problem.

Although the Government, NGOs, and political parties established shelters and offered other assistance to battered spouses, activists asserted that support mechanisms for victims of domestic violence remained inadequate. The police established a Sexual Investigations Unit at each police headquarters as part of a nationwide effort to help victims of sexual crimes and abuse. Police responses and sensitivity to complaints of domestic violence improved, but women's rights activists claimed that the police needed additional training in handling domestic abuse as well as rape cases. In 2003, the Minister for Women, Family and Community Development urged the Government to place female officers at each police station to deal with victims who are often reluctant to lodge reports with male personnel. In 2003, the Prime Minister directed all district police stations to establish units specially trained to minimize the trauma faced by victims of sex crimes and domestic violence.

Some Shari'a experts have urged Muslim women to become more aware of the provisions of Shari'a that prohibit spousal abuse and provide for divorce on grounds of physical cruelty. However, provisions in state Shari'a laws generally prohibit wives from disobeying the lawful orders of their husbands and present an obstacle to women pursuing claims against their husbands in Shari'a courts. Muslim women were able to file complaints in the civil courts.

Spousal rape is not a crime. Theoretically a man who raped his wife could face charges of assault; however, reportedly no man has been convicted under such circumstances. In August, Suhakam and local NGOs called on the Government to amend the Penal Code to include spousal rape as an offense.

Reports of rape were common in the press and among women's rights groups and NGOs. According to the press, 1,462 women were raped in the first 10 months of the year. Many government hospitals have set up crisis centers where victims of rape and domestic abuse could make reports without going to a police station. NGOs and political parties also cooperated in providing counseling for rape victims. However, cultural attitudes and a perceived lack of sympathy from the largely male police force resulted in many victims not reporting rapes. According to the Ministry of Women, Family and Community Development and a leading women's NGO, only 10 percent of rape cases were reported to the police. In 2003, the Penal Code was amended to increase the punishment for rape to include imprisonment for a term of from 5 to 30 years, caning, and a fine. In May, a man was sentenced to caning and 45 years in prison on three counts of rape. While some rapists received heavy punishments, including caning, women's groups noted that other rapists received inadequate punishments. In 2002, a police constable was acquitted of charges of raping two foreign women who were in police custody. The Sessions Court ruled that the acts had been consensual. Following sharp public criticism of the verdict, the Attorney General's office filed an appeal. In 2003, the High Court overturned the Sessions Court's decision and sentenced the policeman to 15 years in prison.

In the past, some NGOs reported instances of female genital mutilation (FGM) in rural areas, but there have been no reports of such practices in recent years.

Prostitution is illegal and was prosecuted. Statistics were available only for foreigners arrested on immigration charges with suspected involvement in prostitution. In 2003, the number of such persons arrested was 5,584 compared to 4,132 arrested in 2001. Police attributed the increase to more vigorous enforcement efforts.

The country was a source and destination country for trafficking in women for purposes of prostitution (see Section 5, Trafficking).

The Government's Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace provides a detailed definition of sexual harassment and attempts to raise public awareness of the problem, but women's groups advocated passage of a law on sexual harassment in lieu of the voluntary code of conduct. The Malaysian Employers Federation opposed any attempt to legislate against sexual harassment in the workplace, arguing that government imposed policies would unduly restrict the management of labor relations. Since the Code's 1999 introduction, the number of reported incidents of sexual harassment has risen.

In August, the Human Resources Ministry said that the Employment Act would be amended to include a provision requiring all companies to appoint an officer from among senior management to handle sexual harassment in the workplace.

Polygyny is allowed and practiced to a limited degree. Islamic inheritance law varies by state, but it generally favors male offspring and relatives. However, one state, Negeri Sembilan, provides for matrilineal inheritance. The number of women obtaining divorces under the provisions of Shari'a that allow for divorce without the husband's consent, while small, was increasing steadily.

Women's rights advocates asserted that women still face discriminatory treatment in Islamic courts due to prejudicial interpretation of Islamic family law and the lack of uniformity in the implementation of family laws among the various states. In 2002, the Sultan of Selangor, who is also the senior Islamic figure in the state, acknowledged the bias against women of Shari'a court judges.

Non-Muslim women are subject to civil (secular) law. The Guardianship of Women and Infants Act gives mothers equal parental rights. Four states extend the provisions of the bill to Muslim mothers. Women's groups urged all states to do the same. In 2002, Parliament approved an amendment to the Group Settlement Act that gives wives a joint stake in land awarded to their husbands.

The Government undertook a number of initiatives to promote equality for women and the full and equal participation of women in education and the work force. Women were represented in growing numbers in professional positions; however, in 2003 the Minister of Women, Family and Community Development noted that, while 46 percent of public sector staff were women, only 15 percent held key posts. The media reported in August that women made up 12 percent of the police force. In the scientific and medical fields, women made up more than half of all university graduates, and the total representation of women at universities increased from 29 percent in 1970 to over 50 percent of the student population in recent years. According to the national union of bank employees, 65 percent of members were women, but only one out of eight principal banking officials was a woman. In August, the Prime Minister announced that 30 percent of decision-making posts in Government would be allocated to women.

Children

The Government has demonstrated a commitment to children's rights and welfare and allocated approximately 25 percent of the national budget to education. The Government provides free education for children through 15 years of age. Although primary education is compulsory, there is no enforcement mechanism governing school attendance. Actual attendance at primary school is 96 percent, while secondary school attendance is 82 percent. A variety of programs provided low cost health care for most children.

The Child Act incorporates the principles of the U.N. Convention on the Rights of the Child, prescribing severe punishments for child trafficking, abuse, molestation, neglect, and abandonment. It also mandates the formation of a Children's Court, which the Government stated would better protect the interests of children; however, the court has not yet been established. The act allows caning of male children between the ages of 10 and 18 years, who may receive a maximum of 10 strokes with a "light cane."

The Government recognized that sexual exploitation of children and incest were problems. Incest in particular was a problem in rural areas. A 2002 amendment to the Penal Code provides for from 6 to 20 years' imprisonment and caning for individuals convicted of incest. The Ministry for Women, Family and Community Development reported 306 cases of incest in 2002. In September, the local press reported that in a survey of 133 convicted sex predators, 23 percent of the victims of sexual offenses were daughters of the offender. However, under the Evidence Act, the testimony of children is accepted only if there is corroborating evidence. This poses special problems for molestation cases in which the child victim is the only witness. Some judges and others recommended that the Evidence Act be amended to accept the testimony of children and that courts implement special procedures to hear the testimony of children.

Statutory rape occurred and was prosecuted. However, Islamic law provisions that consider a Muslim girl an adult after she has had her first menstruation sometimes complicated prosecution of statutory rape. Such a girl may be charged with "khalwat" or "close proximity" (the charge usually used to prosecute premarital or extramarital sexual relations), even if she is under the age of 18 and her partner is an adult. Thus Shari'a courts sometimes punished the victims of statutory rape. Moreover, Shari'a courts sometimes were more lenient with males who were charged with "close proximity." However, in many cases Muslim men were charged and punished for statutory rape under secular law.

Child prostitution existed, but child prostitutes often were treated as delinquents rather than victims. According to police statistics, in 2002, 97 girls under 18 were detained and sent to rehabilitation centers for involvement in immoral activities (see Section 5, Trafficking).

Child labor occurred in certain areas of the country (see Section 6.d.).

Sabah state had a problem of street children. Estimated to number anywhere from a few score to a few hundred, they were born in the country to illegal immigrant parents who have since been deported. These children lacked citizenship and access to government provided support.

Trafficking in Persons

There is no law that specifically and comprehensively criminalizes trafficking in persons. However, the Child Act prohibits all forms of trafficking of children under 18, and the Penal Code comprehensively addresses trafficking for the purpose of prostitution. The Government also uses other laws, such as the Immigration Act, the Restricted Residence Act, and the ISA to prosecute traffickers.

The country was a source, transit, and destination country for trafficking in women and girls for sexual exploitation. Women and girls from Thailand and the Philippines were trafficked through the country to destinations such as Australia, Canada, Japan, Korea, and the United States. Young women primarily from Indonesia, China, Thailand, and the Philippines were trafficked into the country for sexual exploitation. These women often worked as karaoke hostesses, "guest relations officers," and masseuses. Some foreign women and girls employed as domestic servants were held in conditions that amounted to forced labor (see

Section 6.e.).

In 2003, the police arrested 5,584 foreign prostitutes. According to the police, members of the Bar Council, and Suhakam, many foreigners found to be involved in prostitution were possible victims. There were allegations of corruption among law enforcement personnel since some trafficking victims were known to pass through two or more ports of entry without travel documents. One NGO alleged that high level business and political officials were involved in trafficking. In 2003, the police eliminated a human smuggling syndicate including Malaysian Airlines and Malaysian airport officials.

Some Malaysian women and girls were trafficked for sexual purposes, mostly to Singapore, Macau, Hong Kong, and Taiwan, but also to Japan, Australia, Canada, and the United States. According to police and Chinese community leaders, female citizens who were victims of trafficking were usually ethnic Chinese, although ethnic Malay and ethnic Indian women worked as prostitutes domestically. Police and NGOs believed that criminal syndicates were behind most of the trafficking.

Trafficking victims were kept compliant through involuntary confinement, confiscation of travel documents, debt bondage, and physical abuse. During the year, there were a number of reports of foreign women escaping from apartments where they were held and forced to serve as unwilling prostitutes. According to news reports, these women said that they were lured to the country by promises of legitimate employment and were forced into prostitution upon their arrival in the country.

In 2002, the Government amended the Penal Code to include extensive provisions prohibiting buying or selling any person, using deceitful means to bring anyone into or out of the country, and wrongfully restraining (defined to include using threats, withholding clothing, or holding a person's passport) any person with the intention that that person will be used for the purposes of prostitution. Punishment for these offenses includes a maximum 15-year prison term, caning, and a fine, to be determined at the discretion of the sentencing judge. In 2003, police prosecuted 24 cases under a trafficking statute, charged and tried 10 persons and convicted 7. There were 145 trafficking victims involved in these prosecutions. Additionally, in 2003, 49 suspected traffickers were arrested under the Prevention of Crime Ordinance, and 70 cases of suspected trafficking were prosecuted under the Immigration Act. In March, the police arrested two of the country's top criminals alleged to be involved in trafficking and sent them to detention camps for 2 years under the Prevention of Crime Ordinance.

The Government assisted some underage prostitutes and rescued some trafficked women and girls during the year. In 2002, 97 underage prostitutes were sent to rehabilitation centers. The Malaysian Chinese Association (the largest ethnic Chinese political party in the ruling National Front coalition) reported that in 2003, it assisted 73 trafficking victims in escaping from vice syndicates. However, police had no comprehensive policy to protect victims of trafficking. Police often arrested or deported possible trafficking victims for immigration offenses. The police and members of the Bar Council legal aid bureau advised that this was the fastest way to expedite victims' return to their home countries. Trafficking victims who exhibit signs of physical abuse may be sent to a women's shelter instead of being detained by the police; however, permission from the police to allow victims to reside in a shelter was sometimes difficult to obtain. In December, the Ministry of Women, Family and Community Development opened a shelter specifically intended for foreign women who were victims of trafficking.

A number of NGOs with government support provided shelter for trafficking victims and assisted in repatriating them to their home countries. In April, Suhakam hosted a counter-trafficking forum attended by NGOs, police, immigration officials, prosecutors, and representatives from the diplomatic community. In October, a follow-up workshop, involving similar attendees as well as speakers from the International Organization for Migration, outlined a national plan of action to combat human trafficking and provide greater protection to victims.

Persons with Disabilities

The Government did not discriminate against persons with disabilities in employment, education, or in the provision of other state services. A public sector regulation reserves 1 percent of all public sector job openings for persons with disabilities. In 2003, the Prime Minister ordered that all buildings be made disabled-friendly. However, few public facilities were adapted to the needs of persons with disabilities, and the Government has not mandated accessibility to transportation for persons with disabilities. New government buildings were generally outfitted with a full range of facilities for persons with disabilities. In August, the Human Resources Ministry announced a plan to create 3-4,000 jobs annually for the disabled. The budget for the 2005 fiscal year included additional tax benefits for persons with disabilities and their spouses.

In 2001, the Government announced the Code of Practice for the Employment of Persons with Disabilities in the Private Sector as a guideline for all government agencies, employers, employee associations, employees, and others to place suitable persons with disabilities in private sector jobs. Suhakam has recommended legislation to address discriminatory practices and barriers facing persons with disabilities and has organized dialogues among persons with disabilities, government departments, and NGOs to promote awareness of the rights of persons with disabilities.

Special education schools existed, but were not sufficient to meet the needs of the disabled population. The Government undertook many initiatives to promote public acceptance of persons with disabilities, to make public facilities more accessible to persons with disabilities, and to increase budgetary allotments for programs aimed at aiding them. Recognizing that public transportation was not disabled-friendly, the Government reduced the excise duty for persons with disabilities on locally made cars and motorcycles by 50 percent. The most recent statistics indicated that persons with disabilities made up 7 percent of the population.

Indigenous People

Indigenous people (the descendants of the original inhabitants of the peninsular region of the country and the Borneo states) generally enjoyed the same constitutional rights as the rest of the population. However, in practice, federal laws pertaining to indigenous people of the peninsular region, known as the Orang Asli, vest considerable authority in the Minister for Rural Development to protect, control, and otherwise decide issues concerning this group. As a result, indigenous people, particularly in peninsular Malaysia, had very little ability to participate in decisions that affected them.

The "Orang Asli," who numbered approximately 147,000, were the poorest group in the country. According to government statistics, over 80 percent of the Orang Asli lived below the poverty level. In 2002, the Cabinet approved the formation of a national advisory council for the development of Orang Asli. However, only 5 out of 17 council members were Orang Asli. In 2003, the Government announced development projects for the Orang Asli totaling \$26.3 million (100 million ringgit) for the 2004 fiscal year focused on improving the health, pre-school education, infrastructure, and economic activities. Nonetheless, according to a local NGO, the percentage of Orang Asli living below the poverty line increased during the year.

Under the Aboriginal People's Act, the Orang Asli who had been granted land on a group basis were permitted to live on reserves but did not possess land rights. Observers reported that, over the years, the total area of land reserved for Orang Asli had decreased, and some land previously set aside as Orang Asli reserve had been rezoned for development. In 2003, Suhakam called on the Government to resolve outstanding disputes involving native customary land of the Orang Asli.

The uncertainty surrounding Orang Asli land ownership made them vulnerable to exploitation. Logging companies continued to encroach on land traditionally held by Orang Asli and indigenous groups in the Borneo states. In 2003, the press reported that the Orang Asli of the Air Banum Resettlement Scheme were prevented from fishing and gathering forest produce by government security forces. Also in 2003, Orang Asli in Pahang state were arrested for attempting to block logging trucks from entering their land. The press reported that they were later released on bail, and the logging project was cancelled. In 2002, the High Court ruled in favor of an Orang Asli group, the Temuans, as the rightful owners of land used for the construction of the Kuala Lumpur International Airport and ordered the Selangor state government to give compensation. The state government appealed the decision, and the case was still pending at year's end.

Indigenous people in Sarawak continued to protest encroachment by state and private logging and plantation companies onto land that they consider to be theirs under native customary rights. In 2002, for example, a court refused an injunction to stop two timber companies from conducting logging activities in an area that approximately 200 indigenous people in Miri, Sarawak, claimed was their ancestral land. The indigenous persons appealed the ruling, and a decision was still pending at year's end.

Laws allowing condemnation and purchase of land do not require more than perfunctory notifications in newspapers to which indigenous people may have no access. In past years, this led to indigenous people being deprived of their traditional lands with little or no legal recourse.

Suhakam reported that the Bakun Dam project in Sarawak encroached upon the native land of the Penans and that this encroachment caused the degradation of the forests around Penan villages and the pollution of their water supply. The Commission also noted that the development of oil palm plantations encroached on traditional lands.

National/Racial/Ethnic Minorities

The Government maintained extensive preferential programs designed to boost the economic position of the Malay majority, which remained poorer on average than the Chinese minority. Such preferential programs and policies limited opportunities for non Malays in higher education, government employment, business permits and licenses, and ownership of land. According to the Government, these programs were instrumental in ensuring ethnic harmony and political stability. Ethnic Indian citizens, who did not receive such privileges, remained among the country's poorest groups.

Other Societal Abuses and Discrimination

Although there are no laws that prohibit homosexuality per se, laws against sodomy and "carnal intercourse against the order of nature" exist and are enforced. Religious and cultural taboos against homosexuality were widespread. The Government's response to HIV/AIDS was generally non-discriminatory, although much of society continued to stigmatize AIDS sufferers.

Section 6 Worker Rights

a. The Right of Association

By law, most workers have the right to engage in trade union activity, but only 8.5 percent of the labor force was represented by the 609 trade unions. Those restricted from joining a union include workers categorized as "confidential" and "managerial and executive," as well as defense and police officials. With certain limitations, unions may organize workplaces, bargain collectively with employers, and associate with national federations. In theory, foreign workers can join a trade union; however, the Immigration Department placed conditions on foreign workers' permits that effectively barred them from joining a trade union.

(see Section 6.e.).

The Trade Unions Act prohibits interfering with, restraining, or coercing a worker in the exercise of the right to form trade unions or in participating in lawful trade union activities. However, contrary to International Labor Organization (ILO) guidelines, the act restricts a union to representing workers in a "particular establishment, trade, occupation, or industry or within any similar trades, occupations, or industries." The Director General of Trade Unions may refuse to register a trade union and, in some circumstances, may also withdraw the registration of a trade union. When registration is refused, withdrawn, or canceled, a trade union is considered an unlawful association.

Trade unions from different industries may join in national congresses, but the congresses must register as societies under the Societies Act (see Section 2.b.).

Malaysian Trade Union Congress (MTUC) officials continued to express frustration about delays in the settlement of union recognition disputes. While the Industrial Relations Act requires that a union be recognized within 21 days of application, it was not uncommon for unions to go unrecognized for 1 to 4 years. During the year, there were 101 applications for trade union recognition under the Industrial Relations Act. According to the Ministry of Human Resources, there were 10 court challenges by private companies to decisions authorizing the formation of unions. In August, the press reported that the employees of Euromedical Industries finally managed to get their union recognized after 29 years of court appeals.

Government policy inhibited the formation of national unions in the electronics sector, the country's largest industry. The Government believed that enterprise level unions were more appropriate for this sector. According to MTUC officials, 150,000 electronics workers were unable to organize and only 8 in house unions were formed in the electronics industry. Collective bargaining agreements are limited in those companies designated as having "pioneer status." According to the ILO, the Government has promised to repeal this statute since 1994.

Unions maintained independence both from the Government and political parties, although individual union members may belong to political parties. Although union officers by law may not hold principal offices in political parties, individual trade union leaders have served in Parliament. Trade unions were free to associate with national labor congresses, which exercised many of the responsibilities of national labor unions, although they cannot bargain for local unions.

There are two national labor organizations. The MTUC is a society of trade unions, in both the private and government sectors, registered under the Societies Act. As such, the MTUC does not have collective bargaining or industrial action rights, but provides technical support for affiliated members. Government sector unions had opportunities to affiliate with the Congress of Unions of Employees in the Public and Civil Service, a federation of trade unions registered under the Trade Unions Act. Trade unions were also permitted to affiliate with international trade union organizations, such as global union federations and the International Confederation of Free Trade Unions, subject to the approval of the Director General of Trade Unions. Although the law grants public servants the right to organize at the level of ministries and departments, the Government did not respond to ILO requests for specific information on the numbers and categories of civil servant employees covered or details regarding the collective bargaining agreements reached. There were three national joint councils representing management and professional civil servants, technical employees, and non technical workers.

b. The Right to Organize and Bargain Collectively

Workers have the legal right to organize and bargain collectively, and collective bargaining was widespread in those sectors where labor was organized. Charges of discrimination may be filed with the Ministry of Human Resources or the Industrial Court. Critics alleged that the Industrial Court was slow in adjudicating worker complaints when conciliation efforts by the Ministry of Human Resources failed. However, others pointed out that the Industrial Court almost always sided with the workers in disputes. In the past, employers reportedly often ignored Industrial Court judgments with impunity. In 2002, the number of Industrial Court chairpersons was increased from 14 to 21 to address the problem of backlogged cases.

The Government holds that issues of transfer, dismissal, and reinstatement are internal management prerogatives; therefore, they are excluded from collective bargaining, which is not in accordance with ILO standards. The Minister of Human Resources can suspend for up to 6 months any trade union deemed to be used for purposes prejudicial to or incompatible with security or public order.

Although strikes are legal, the right to strike is severely restricted. The law contains a list of "essential services" in which unions must give advance notice of any industrial action. The list includes sectors not normally deemed essential under ILO definitions. The Government stated these essential services were considered crucial to the economy and the public interest. The MTUC officials said that requirements imposed by the authorities were so stringent that it was almost impossible to strike. According to the Ministry of Human Resources statistics, there were 2 strikes and lockouts involving 57 workers in 2003. Employees in the public sector do not have the right to collective bargaining.

The Industrial Relations Act requires the parties to notify the Ministry of Human Resources that a dispute exists before any industrial action may be taken. The Ministry's Industrial Relations Department then may become involved actively in conciliation efforts. If conciliation fails to achieve settlement, the Minister has the power to refer the dispute to the Industrial Court. Strikes or lockouts are prohibited while the dispute is before the Industrial Court. The act prohibits employers from taking retribution

against a worker for participating in the lawful activities of a trade union. When a strike is legal, these provisions prohibit employer retribution against strikers and leaders. However, some trade unions questioned the effectiveness of the provisions.

Companies in free trade zones (FTZs) must observe labor standards identical to those in the rest of the country. Many workers in FTZ companies were organized, especially in the textile and electrical products sectors. The ILO continues to object to legal restrictions on collective bargaining in pioneer industries.

c. Prohibition of Forced or Compulsory Labor

The Constitution prohibits forced or compulsory labor, and the Government generally enforced this prohibition. Certain laws allow the use of imprisonment with compulsory labor as punishment for persons who express views opposed to the established order or who participate in strikes. However, these laws were not applied and appear to be constitutionally prohibited.

Some of the estimated 260,000 foreign women employed as household workers have been subjected to physical abuse and forced to work under harsh conditions.

The Government prohibits forced and compulsory labor by children, and there were no reports that such practices occurred in the formal sector (some child domestics were working in conditions amounting to forced labor).

d. Status of Child Labor Practices and Minimum Age for Employment

The Children and Young Persons (Employment) Act prohibits the employment of children younger than the age of 14. The act permits some exceptions, such as light work in a family enterprise, work in public entertainment, work performed for the Government in a school or in training institutions, or work as an approved apprentice. In no case may children work more than 6 hours per day, more than 6 days per week, or at night.

Child labor occurred in certain areas of the country. There was no reliable estimate of the number of child workers. Most child laborers worked informally in the agricultural sector, helping their parents in the field. However, only adult members of the family received a wage. In urban areas, child labor could be found in family food businesses, night markets, and small-scale industries. Government officials did not deny the existence of child labor in family businesses but maintained that foreign workers have largely replaced child labor and that the Government vigorously enforced child labor provisions. In practice, mechanisms for monitoring workplace conditions were inadequate, and the resolution of most abuse cases were often left to private, for profit labor agencies that were themselves often guilty of abuses. Bilateral labor agreements between Indonesia and Malaysia do not provide adequate protections for domestic workers.

e. Acceptable Conditions of Work

There was no minimum wage, as the Government preferred to allow market forces to determine wages. Prevailing market wages generally provided a decent living. Wage Councils, which were established by the Wage Council Act of 1947 to provide a recommended minimum wage in those sectors in which the market wage was determined insufficient, had little impact on wages in any sector. According to MTUC officials, the Wage Councils had not met for more than 13 years, and their recommended wages have long been obsolete.

Plantation workers generally received production-related payments or daily wages. In 2003, the National Union of Plantation Workers (NUPW) and the Malaysian Agriculture Producers Association agreed on a monthly minimum wage for palm oil plantation workers of \$92 (350 ringgit) per month. Proponents of the agreement said that productivity incentives and bonuses raised the prevailing wage to nearly \$184 (700 ringgit). In 2003, rubber plantation workers were provided with a similar minimum guarantee.

Under the Employment Act, working hours may not exceed 8 hours per day or 48 hours per workweek of 6 days. Each workweek must include a 24-hour rest period. The act also sets overtime rates and mandates public holidays, annual leave, sick leave, and maternity allowances. The Labor Department of the Ministry of Human Resources is responsible for enforcing these standards, but a shortage of inspectors precluded strict enforcement.

Significant numbers of contract workers, including numerous illegal immigrants, worked on plantations and in other sectors. According to statistics from the NUPW, foreign workers made up 50 percent of the plantation work force; however, the true number may have been higher since illegal immigrants were not counted. Working conditions for these laborers compared poorly with those of direct-hire plantation workers, many of whom belonged to the NUPW.

Work related accidents were especially high in the plantation sector. According to the Human Resources Ministry, 14 percent of all reported industrial accidents during the year occurred on plantations.

Foreign workers in the construction and other sectors, particularly if they were illegal aliens, generally did not have access to the system of labor adjudication. In 2002, government investigations into this problem resulted in a number of steps to eliminate the abuse of contract labor. For example, in addition to expanding programs to regularize the status of immigrant workers during the

year, the Government investigated complaints of abuses, attempted to inform workers of their rights, encouraged workers to come forward with their complaints, and warned employers to end abuses. Like other employers, labor contractors may be prosecuted for violating the labor laws.

The Workmen's Compensation Act covers both local and foreign workers, but provides no protection for foreign domestic workers. According to the Government, foreign domestic workers are protected under the Employment Act, particularly as regards wages and contract termination. However, employers sometimes failed to honor the terms of employment and abused their domestic servants. The terms of the contract for Indonesian domestic workers are vague and open to abuse. The contract provides for a monthly salary of \$100 (380 ringgit), but does not specify the number of working hours per day. HRW and local NGOs reported that many Indonesian domestic workers were required to work 14-18 hours a day, seven days a week. The contract for Filipina domestic workers included more comprehensive protections. During the year, the Government was negotiating a new memorandum of understanding with Indonesia to provide better protections for domestic workers, but as of year's end it had not been signed. Some workers alleged that their employers subjected them to inhuman living conditions, withheld their salaries, and physically assaulted them. In May, the local and international press reported the case of an Indonesian domestic worker who was beaten and abused by her employer. The employer was arrested and charged on four counts of causing grievous hurt, which carry a maximum sentence of 67 years. In August, HRW reported that such cases were common and that the Government failed to protect Indonesian household workers. However, local NGOs advised that workers have the right to take legal action against abusive employers. According to NGOs, the courts generally have sided with employees and ruled that employers must pay all back salary and compensate plaintiffs for injuries.

Legal and illegal foreign workers from Indonesia, the Philippines, Burma, Thailand, India, Bangladesh, Nepal, Vietnam, and other countries constituted approximately 20 percent of the work force. Illegal foreign workers have no legal protection under the labor laws and have no legal recourse in cases of abuse.

The Occupational Safety and Health Act (OSHA) covers all sectors of the economy except the maritime sector and the military. The act established a national Occupational Safety and Health Council, composed of workers, employers, and government representatives, to set policy and coordinate occupational safety and health measures. It requires employers to identify risks and take precautions, including providing safety training to workers, and compels companies that have more than 40 workers to establish joint management-employee safety committees. The act requires workers to use safety equipment and to cooperate with employers to create a safe, healthy workplace. Employers or employees that violate the OSHA are subject to substantial fines or imprisonment for up to 5 years. There are no specific statutory or regulatory provisions that provide a right for workers to remove themselves from dangerous workplace conditions without arbitrary dismissal.